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DOMINANT OPINIONS IN ENGLAND DURING THE NINETEENTH CENTURY IN RELATION TO LEGISLATION AS ILLUSTRATED BY ENGLISH LEGISLATION, OR THE ABSENCE OF IT, DURING THAT PERIOD.

PROFESSOR DICEY, Vinerian Professor of English Law, in the University of Oxford, has recently published, through Messrs. Macmillan & Co., a book with the following title: "The Relation between Law and Public Opinion in England during the Nineteenth Century." The book is the outcome of a course of lectures delivered by the author, seven years ago, at the Harvard Law School, pursuant to an invitation, accepted by him, as he informs us in his preface, to lecture at that School on the History of English Law during the Nineteenth Century. The title of the book invites inquiry. 1. In what sense does the author use the term "law"? As commonly used by lawyers, the word means law as administered by courts of justice in suits between litigating parties, but here it is clearly not used in that sense, but in the sense of legislation. 2. What does the author mean by "public opinion"? Who are the persons whose individual opinions taken in the aggregate form that public opinion which the author has in mind? Are they those whose opinions directly control legislation, *i. e.*, the members of the House of Commons for the time being? No, clearly not. The author, it is believed, would not think of calling the opinions of a majority of the members of the House of Commons public

opinion. Nor would there be any propriety in making the relation between the opinions of a majority of the legislators of the country and the legislation which they enact a subject of inquiry, as legislation is supposed to be the direct expression of the opinions of those by whom it is enacted. Although, therefore, the author not unfrequently uses the term "legislative opinion," it does not follow that he uses that term as equivalent to public opinion as used in his title-page. Is it the electorate whose opinions in the aggregate the author treats as forming public opinion? The answer to this question is not so clear; but it seems to me very clear that the electorate constitute only a portion of those whose opinions in the aggregate form public opinion in reference to legislation. The electorate differ from the rest of the people only in this, namely, that they alone have a voice in the election of members of the House of Commons, and consequently they alone have the power to express their disapproval of the course taken by a member, for whom they may formally have voted, by refusing to vote for his re-election, *i. e.*, by voting for some one else. But when a member has once been elected, he represents those who voted against him as much as he does those who voted for him, — he represents also all the people of the city, borough, or district for which he was elected as much as he does those who had a voice in the election, — nay, he represents the entire nation as much as he does the city, borough, or district for which he was elected. The electors may, indeed, require a candidate to give pledges as a condition of their voting for him, and, if he does give pledges, of course he is bound in honor to redeem them, but whether he does so or not, or whether his course as a legislator is satisfactory or not to those who elected him, is a question between him and them only; it is not a question in which any one else has any direct interest. It seems to be clear, therefore, that the author must be taken to have meant by public opinion the opinion of the entire nation, taken in the aggregate, in reference to legislation.

It does not seem to me that the author has been wholly fortunate in making the relation between legislation and public opinion the title of his treatise. My reasons are, first, that the closeness of that relation in England during the nineteenth century is too obvious greatly to require elucidation, as the electorate of that country cannot be supposed to differ greatly in their political opinions from their fellow-subjects; and no intelligent person requires to be told that, whenever the Executive Government finds itself in a minority

in the House of Commons and believes the reason to be that the majority are not in harmony with public opinion, it may dissolve Parliament and order the election of a new House of Commons, or that, whenever the Opposition in the House of Commons finds itself in a majority, it may compel the Executive Government to resign, and so give place to the Opposition, unless the former is prepared to take the responsibility of dissolving Parliament; and, secondly, that public opinion, rather than the relation between legislation and public opinion, is in truth the subject of the book. It may be conjectured, moreover, that the author, in preparing his lectures, felt himself trammelled by the terms of the invitation which he had received, and that he was influenced by that circumstance in giving a title, first, to his lectures, and then to his book. If so, it is a pity, as the title, coupled with the preface, may convey to some persons who are not lawyers the impression that the book is not meant for them, and so induce them to lay it down before they have ascertained for themselves its true character. In truth, the book is in no sense a law book,¹ and some of the most enthusiastic encomiums of it that I have heard have come from gentlemen who have never opened a law book.

Professor Dicey declares, in his opening lecture, that legislation in England during the nineteenth century was more under the control of public opinion than in any other country, not excepting the United States. The only reason that he gives, however, for not excepting the United States is that in that country restrictions are imposed on legislators by the constitutions, both of the United States, and of the several states.² In regard to this, it may be observed, first, that constitutions can exert only a negative influence on legislation; secondly, that, according to Professor Dicey, the true sovereignty in England resides in those who, for the time being, hold the elective franchise, and therefore under the Reform Act of 1832, it resided in the ten-pound householders, while at the present moment it resides in the aggregate of all the householders in the country. If this be so, it seems to follow that our constitutions create one important difference between England and this country which has not attracted much attention; for here, though it may perhaps be said that the sovereignty resides in those who, for the time being, hold the elective franchise, yet it lies entirely

¹ Lecture XI is, however, a partial exception to this statement, the subject of that lecture being "Judicial Legislation."

² Dicey 9.

dormant except when the business before them is the election of representatives to make a new constitution, *i. e.*, delegates to a constitutional convention; or when they are called upon to vote upon a constitution already framed and submitted to them for ratification or rejection. It may be added that the only sovereignty that resides in the people of the United States, in the aggregate, is that portion of sovereignty which has been delegated to them by the people of the several states respectively under the Constitution of the United States. There is one question in this connection as to which we seem to be much at sea, namely, whether a constitution which makes no provision for its own amendment or change can be amended or changed except by a revolutionary act, and consequently whether a constitution which does make provision for its own amendment or change can be amended or changed without reference to such provision except by a revolutionary act. Certain it is that at all ordinary elections held under our state constitutions the electors exercise only a delegated power. The limitations imposed upon the legislative power by our constitutions do not, however, constitute the only reason why public opinion exerts less control over legislation here than in England, especially over federal legislation, for, first, the United States Senate, while it is, like the House of Lords, a permanent body, and each member is elected for six years, yet unlike the House of Lords it exerts a much greater influence over legislation than does the lower House; secondly, our national legislators are frequently elected a long time before they take their seats, and hence may be supposed to represent the public opinion of the time when they were elected rather than that of the time when they take their seats; thirdly, our United States Senators are elected by the state legislatures, and hence they are for that reason much less amenable to public opinion than if they were elected directly by the people of the several states respectively; fourthly, our national legislators come from forty-five different states, and yet no one of them can be fairly said to reflect any other public opinion than that of his own state; and, lastly, our legislators, both state and national, when once elected, are perfectly secure of their seats, until the term for which they were elected expires by its own limitation.

It seems to me, also, that there is a reason why the House of Commons is not likely to reflect the opinion of the country at large as speedily or as perfectly as Professor Dicey seems to suppose it will, namely, in the fact that all Parliamentary elections

are local, an owner or occupier of a house being entitled as such to vote only for the member or members to which the city, borough, or division of a county, in which the house is situated, is entitled; and though the elections generally come near together in point of time, yet they are wholly independent of each other. Doubtless there have been measures in the past which aroused the electors all over the country, or at least very generally, such as the Reform Bill of 1832, or the bill for the repeal of the Corn Laws in 1846, and doubtless there will be such measures in the future, but they are likely to be rare.

Before Professor Dicey reaches the question what were the dominant currents of public opinion in England during the nineteenth century as to legislation, he raises the question whether those which were dominant during the last two-thirds of the century will each admit of the same explanation, namely, the advance of democracy during that period; and to that question his answer is a very decisive negative, his opinion being that there is no *a priori* reason why a democracy should advocate one kind of legislation rather than another; and he further declares that the householders have thus far shown themselves conservative.¹ It would be a great mistake, however, for an American reader to infer that democracy in England, under household suffrage, is the same as, or even much resembles, democracy in this country, or that it would be the same, if household suffrage should, in England, give way to universal or manhood suffrage; and the reason is that electors in England, as such, have not, either directly or indirectly, any voice in or any control over the Executive Government. English democracy begins and ends with a right to vote for members of Parliament. Once in seven years, or oftener in case a Parliament is dissolved before the expiration of the seven years for which it was elected, every elector is entitled to vote for one or more members of a new Parliament, and the right so to vote is what English working-men were struggling for from the middle of the nineteenth century onward. Consequently, the only object that an English elector, as such, can have in voting, or in seeking to influence the votes of others, is thereby to influence legislation,—not to obtain office either for himself or for his friends. Nor is a boss a possibility in English national politics, whether in or out of office, unless, indeed, a man shall appear who combines the qualities of a boss

¹ Dicey 48-61.

with those of a leader of the House of Commons. It is not surprising, therefore, that Professor Dicey should declare the English householder to be conservative in politics. What inducement has he to be otherwise?

Having disposed of the question whether the different currents of public opinion as to legislation which were dominant in England during the last two-thirds of the nineteenth century were merely different degrees of democratic opinion, Professor Dicey proceeds to inquire what were the opinions which were dominant during the century, and to give an account of them; and he declares that each third of the century had a dominant current of opinion peculiar to itself; that the dominant current of opinion peculiar to the first third of the century was a combination of the optimism of the time of Blackstone and that dread of innovation and revolution which had been inspired in England by the French Revolution.¹ This opinion ceased to be dominant on the passing of the Reform Bill of 1832, and Professor Dicey says it would have ceased to be dominant several years sooner but for the fact that the unreformed House of Commons was not sufficiently responsive to public opinion. Professor Dicey calls the period during which it was dominant the period of quiescence or stagnation, or the period of old toryism, as distinguished from the new toryism, which calls itself conservatism. Of course the legislative characteristic of the period was the absence of legislation.

On the passing of the Reform Bill of 1832 the period of quiescence gave place to the period which Professor Dicey calls the period of individualism, or Benthamism, or of Benthamite liberalism.² It was called the period of individualism because, during that period, the leading aim of legislation was to secure to every person the greatest practicable amount of individual freedom, and, on the other hand, to impose upon every one the sole responsibility of taking care of himself. Why was it also called Benthamism? Because the opinion which it represented was chiefly created by Bentham and his disciples, and because Bentham laid down and advocated these two propositions, namely: first, that the aim of legislation should be to secure the greatest amount of happiness to the greatest number of persons, or, in other words, to maximize pleasure and minimize pain; and, secondly, that every person must be assumed to be the best judge of his own happiness, or of

¹ Dicey 62-63.

² *Ibid.* 63-64.

what will give to him the most pleasure and the least pain. Why was it also called liberalism? Because it was the view of legislation advocated by the now dominant liberal party, which had taken the place of the old whig party.

As the doctrine of individualism is also the doctrine of *laissez-faire*, how does it happen that the period of individualism, instead of being, like the preceding period, one of legislative quiescence, was a period of great legislative activity? Because at the beginning of the period inequality everywhere prevailed, privilege for the few and restraint upon the many being the rule; and hence a period of legislative activity was necessary in order to get rid alike of privilege and restraint, and to substitute equality for inequality. One of the things upon which individualism especially insisted was freedom of contract, and the substitution of contract for *status*; and yet Professor Dicey shows that there is a point beyond which freedom of contract favors not freedom, but slavery, and he asks pertinently whether a man shall be free to make a contract which will deprive him of freedom; also whether an unlimited number of men should be at liberty to form themselves into an association, for example, a trades-union, and bind themselves respectively, *i. e.*, each to all the others, to act in accordance with the decision of a majority of the members; and I understand Professor Dicey's opinion to be in the negative, or, at least, that the doctrine of individual freedom of contract does not properly extend to such a case.¹

Professor Dicey is of opinion that individualism ceased to be dominant at about the beginning of the last third of the century, and then gave place to what he calls collectivism, and sometimes socialism. With him, however, the term "collectivism" seems scarcely to mean more than *anti-individualism*, though the term would seem to have at least this affirmative meaning, that it favors the interference of the state in behalf of some persons or classes, and, therefore, at the expense of others. How, then, does the state of things which it favors differ from the state of things which existed during the first third of the century? Its advocates will answer, with much emphasis, that collectivism favors the interference of the state in behalf of the poor and the weak, and at the expense of the rich and the strong, while in the first third of the century the interference was in behalf of the rich and the strong, and at the expense of the poor and the weak.

¹ Dicey 149 *et seq.*

A conspicuous and most interesting feature of the book is the manner in which the author brings out the fact that a dominant current of public opinion and also one or more counter-currents commonly exist side by side, the latter constantly opposing and modifying, in a greater or less degree, the action of the former. Thus, during the entire period of old toryism, there was a counter-current of individualism, which was constantly growing and increasing in strength; but when at length it had become strong enough to do battle successfully with its adversary in the open, it found the latter intrenched behind an unreformed House of Commons; and, therefore, the first task to which it must set itself was the reform of that House; and this gives the author an opportunity to show the condition that England was in, in respect to representation, during the first third of the century,—an opportunity of which he most effectively avails himself.¹

It would ill become an American to speak flippantly of the unreformed House of Commons,—the venerable mother of all representative assemblies. There had never been any attempt to make such a distribution of seats in the House of Commons as would give to every elector an equal voice in the legislation of the country; nor could such a distribution have been made with any approach to accuracy prior to 1801, as there had been no enumeration of the population prior to that time. All that had been attempted, therefore, had been to give every important interest a representation, so that it might be sure of a hearing in Parliament. Nor had it been foreseen that time might bring a great increase or a great shifting of population, and therefore no provision had been made for either; and hence the number, as well as the distribution of seats was fixed and permanent, and no change could be made in either without an Act of Parliament. Moreover, as no change could be made in either, except at the expense of existing interests, it was not to be supposed that the latter would permit it to be made without a struggle to prevent it. In 1832, however, four decennial enumerations of the population had been made, and the population of England and Wales had, between 1801 and 1831, increased from eight millions to thirteen millions. The country, moreover, had recently changed from an agricultural to a manufacturing country, and there had been in consequence great shiftings of population, particularly from the South and Southwest to the North. Large manufacturing cities had suddenly sprung up

¹ Dicey 111-117.

in the North, and Liverpool had taken the place of Bristol as the second seaport of the kingdom. Meantime, what was the state of the representation? Professor Dicey answers that of a total number of 548 members of the House of Commons, as that House existed until the union with Ireland, 200 were elected by less than 7,000 electors, and that while the County of Cornwall had 42 members, Birmingham and Manchester were wholly unrepresented.¹ Yet it should not be forgotten that it was in the unreformed House of Commons that the two Pitts, Burke, and Fox made all their great Parliamentary speeches, and that Burke represented a "rotten borough" during twenty-three of the twenty-nine years of his Parliamentary career.²

When, upon the passing of the Reform Bill of 1832, individualism became the dominant public opinion, the previously dominant toryism became a counter-current, and almost immediately hostility to *laissez-faire* also began to show itself as a rising power. Professor Dicey, indeed, quotes³ very strong expressions of opinion to that effect by Southey as early as 1829, and by Dr. Arnold and Carlyle, respectively, in 1838 and 1839. Southey says: "Moral evils are of [man's] own making; and undoubtedly the greater part of them may be prevented, though it is only in Paraguay (the most imperfect of Utopias) that any attempt at prevention has been carried into effect."⁴ Dr. Arnold, speaking of the neglect to provide a proper position in the state for the manufacturing population, says: "This neglect is encouraged by one of the falsest maxims which ever pandered to human selfishness under

¹ Dicey 115.

² During his first nine years in Parliament, from 1766 to 1774, both inclusive, he sat for Lord Verney's borough of Wendover. During the next six years he sat for the city of Bristol, and during the remaining fourteen years he sat for the Marquis of Rockingham's borough of Malton.

³ Dicey 214-216.

⁴ Professor Dicey quotes from Macaulay the following description of Southey's theory of the functions of government: "He conceives that the business of the magistrate is not merely to see that the persons and property of the people are secure from attack, but that he ought to be a jack-of-all-trades, — architect, engineer, schoolmaster, merchant, theologian, a Lady Bountiful in every parish, a Paul Pry in every house, spying, eaves-dropping, relieving, admonishing, spending our money for us, and choosing our opinions for us. His principle is, if we understand it rightly, that no man can do anything so well for himself as his rulers, be they who they may, can do it for him, and that a government approaches nearer and nearer to perfection, in proportion as it interferes more and more with the habits and notions of individuals. He seems to be fully convinced that it is in the power of government to relieve all the distresses under which the lower orders labor." (Dicey 214, n. 1.)

the name of political wisdom — I mean the maxim that civil society ought to leave its members alone, each to look after their several interests, provided they do not employ direct fraud or force against their neighbor. That is, knowing full well that these are not equal in natural powers, — and that still less have they ever within historical memory started with equal artificial advantages, knowing also that power of every sort has a tendency to increase itself, we stand by and let this most unequal race take its course, forgetting that the very name of society implies that it shall not be a mere race, but that its object is to provide for the common good of all, by restraining the power of the strong and protecting the helplessness of the weak." Carlyle says: "That the arrangements of good and ill success in this perplexed scramble of a world, which a blind goddess was always thought to preside over, are in fact the work of a seeing goddess or god, and require only not to be meddled with: what stretch of heroic faculty or inspiration of genius was needed to teach one that? To button your pockets and stand still is no complex recipe. *Laissez faire, laissez passer!* Whatever goes on, ought it not to go on? . . . Such at bottom seems to be the chief social principle, if principle it have, which the Poor Law Amendment Act has the merit of courageously asserting, in opposition to many things. A chief social principle which this present writer, for one, will by no manner of means believe in, but pronounce at all fit times to be false, heretical, and damnable, if ever aught was." Professor Dicey adds that these "three men of genius agreed in nothing but in their common distrust of *laissez-faire*, and in their conviction that some great exertion of the authority of the state was needed for the cure of the diseases which afflicted the commonwealth." This conviction was shared in by an ever increasing number of persons for the next thirty years, or until about 1870, when it seems to have become dominant. By what means was individualism thus overthrown, and collectivism enthroned in its place? A short answer seems to be that it was by means of an alliance between toryism and the working-classes, as old toryism had been overthrown in 1832 by an alliance between the Benthamites and the whigs. Nor was an alliance between the most aristocratic and the most democratic class at all surprising. The Benthamites belonged as a rule to the great middle class, which received a great accession of strength from those on whom the electoral franchise was conferred by the Reform Bill of 1832, which was passed wholly in the inter-

est of the middle class. It was not to be supposed, therefore, that working-men would feel particularly friendly to those next above them, and who were in the full enjoyment of political rights from which they themselves were wholly excluded. Moreover, the employers of labor belonged to the middle class, and they, in respect to the working-classes, represented capital, as the working-classes represented labor, and the relation between capital and labor seems seldom to be more friendly than that of an armed truce. Between tories and working-men, on the other hand, there existed no relation calculated to excite hostility, and the former were too far above the latter to excite in them a feeling of jealousy. Besides, neither the tories nor the working-men had much to hope for politically, except through an alliance with each other. The one political object of the tories was to overthrow the liberals and reinstate themselves in power, and they had but a slim prospect of accomplishing this object, except with the aid of the working-men. The latter, moreover, had little to hope for from the liberals, who did not need their assistance, and whose very creed precluded them from legislating in favor of one class at the expense of another, and, therefore, precluded them from legislating in favor of working-men at the expense of capital.

It was not, however, till near the beginning of the last third of the century that any conscious alliance between tories and working-men was brought about, though there was an unconscious alliance between working-men and a portion of the tory party during nearly the whole of the second third of the century, or at least the latter were very earnest workers in the interest of the former. What was the field in which they thus worked? In the field of legislation in the interest of factory operatives and at the expense of manufacturers. This legislation constituted what Professor Dicey calls the factory movement, and his account of it forms one of the most brilliant portions of his book.¹ He assures us that this movement originated wholly with philanthropic tories, and that it was under their guidance to the end. To show how rapidly the movement grew in strength, it is only necessary to say that as early as 1847, only a year after Benthamism had achieved its crowning victory in the repeal of the Corn Laws, the friends of the factory movement were strong enough to carry the Ten Hours Bill,² to defeat which its enemies had marshalled all their strength.³

¹ Dicey 219-239.

² 10 & 11 Vict. c. 29.

³ Professor Dicey quotes from Lord Shaftesbury's private diary a passage from

To show also how comprehensive the movement was, and how great a share it had in the victories of collectivism, it may be added that it finally culminated in the passing of the labor code of 1901.¹ If the work done by the tory leaders of this movement had not stirred the hearts of the working-men on whose behalf it was undertaken and carried through, they would have been ingrates indeed. If any reader of this article should still be in doubt as to whether he shall read Professor Dicey's book, let him read the "characters," as drawn by Professor Dicey, of the leaders of this movement, namely, Robert Southey, Richard Oastler, Michael Sadler, and Lord Shaftesbury.²

At length, Disraeli had the sagacity to educate his party into the formation of an open alliance with working-men. Professor Dicey says the collapse of the Southern Confederacy formed an era in the advance of democracy in England; that while the aristocracy and wealth of England had given their moral support to the "lost cause," the working-men had recognized in the War of Secession a contest between democracy and oligarchy, had patiently endured the hardships of the cotton famine which it caused, and calmly and confidently awaited its outcome; that the working-men of England consequently shared, to some extent, in the victory won by democracy in America, and found themselves at the close of the war in a much stronger position politically than ever before; and that it was plain to all that the elective franchise must be further extended. Accordingly, at the next session of Parliament, Gladstone brought in a reform bill, but after a long continued and very able debate, it was defeated; the liberal ministry resigned, and the conservative party came into power. At the next session of Parliament another reform bill was brought in by Disraeli, and carried, which conferred the elective franchise upon the artisans of towns; and this Act was followed by another in 1884, which conferred it upon all householders, and so upon country laborers.

It must not be supposed, however, that collectivism has advanced itself by the same method as individualism, nor that it has produced the same effect upon the conservative party that indi-

which it appears that, in carrying through the Ten Hours Bill, he encountered nothing but hostility from Sir Robert Peel, O'Connell, Gladstone, Brougham, Bright, Cobden, and Miss Martineau. (Dicey 233)

¹ Factory and Workshop Act, 1901, 1 Edw. VII, c. 22.

² Dicey 223-231.

vidualism did upon the whig party. Individualism was a doctrine and a theory ; was loudly proclaimed and aggressive. Collectivism, on the other hand, is not a theory, but a practice. It is an influence which is not openly acknowledged. Its very name indicates this, *i. e.*, it is used because of its vagueness, because of the little meaning that it conveys, and because of its consequent harmlessness. In short, it is used in order to avoid using "socialism." Socialism is, indeed, a theory, but it is one with which no practical politician would, in England, be willing to identify himself. It has worked its way silently and is known only by its fruits. Individualism, or Benthamism, may almost be said to have swallowed up the old whig party, and it certainly gave it a new name. It had, like the tory party, been living upon its traditions, but Benthamism infused into it new life and vigor. Collectivism, on the other hand, has affected the conservative party only by increasing its numbers, and its consequent political strength. Ostensibly, at least, the latter remains, in other respects, what it was before collectivism was heard of. In short, the conservative party has never adopted socialism as part of its creed, as the whig party did individualism. It has courted the working-classes, but it has done so, not by adopting their theories, but by making concessions to them, and by conferring upon them great practical benefits, or at least, what the latter so regarded. It is to be remembered also that paternalism in government was always a part of the tory creed.

I have shown the manner in which Professor Dicey combines the treatment of dominant public opinion as to legislation with the treatment of counter-currents on the same subject. To make his view complete, however, he finds it necessary to consider another species of subordinate currents of opinion, namely, cross-currents. What is the distinction which Professor Dicey makes between counter-currents and cross-currents? A counter-current is always in direct opposition to the existing dominant opinion. It sometimes consists of an opinion which has previously been dominant, but which, having ceased to be dominant, has become a counter-current. Such was old toryism after the passing of the Reform Bill of 1832. It may also consist of some new opinion in opposition to the dominant opinion, and which the latter has caused to spring up. Such was the collectivism which represented hostility to individualism and *laissez-faire* during the dominance of the latter. A cross-current, on the other hand, is one which is independent alike of the dominant opinion, and also of any counter-currents

which may exist. One of its characteristics must, it seems, always be that it extends to a part only of the entire field of legislation; for if it extended to the whole field it would necessarily become a counter-current. It seems also that it must, in order to make itself felt, substantially control, or at least modify, that portion of legislation to which it extends. While, therefore, a cross-current of opinion generally extends only to such legislation as affects directly a single class of the people, it must, in order to be successful, enlist the sympathy and support of a large portion of the entire nation. And such was the current of opinion which Professor Dicey selects for the illustration of the nature and working of cross-currents of opinion, namely, the cross-current of clerical or ecclesiastical opinion, *i. e.*, the opinion which controlled, or greatly modified, legislation affecting the national Church during the last two-thirds of the nineteenth century. To this subject he devotes substantially the whole of his tenth lecture, and the work is most admirably done. He begins by showing that immediately after the passing of the Reform Bill of 1832 the opinion was well-nigh universal that the Church was in great peril. "The policy of the popular leaders, whether whigs or Benthamites, was essentially secular and anti-clerical. The whigs had always been the cool friends, if not the foes, of the clergy, and had found their most constant adherents among Dissenters. The doctrines of Bentham clearly pointed towards disestablishment. In 1832 popular feeling identified zeal for the Church with opposition to reform, and considered bishops and parsons the natural allies of borough-mongers and tories. At the moment when the vast majority of the electors demanded Parliamentary reform with passionate enthusiasm, no class was the object of more odium than the bench of Bishops. Proposals were once and again brought before Parliament to expel them from the House of Lords. Whatever, again, might be the other effects of the Reform Act, it assuredly gave new power to what was then termed the Dissenting interest; at the meeting of the first reformed Parliament it seemed for a moment possible that Dissenters might exercise political predominance, and the rule of Nonconformists could mean nothing less than a revolution in the position of the Church.¹ . . . In these circumstances observers of the most different characters and of opposite opinions felt assured that the Church was in danger. In 1833

¹ Dicey 312.

Macaulay wrote that in case the House of Lords should venture on a vital matter to oppose the Ministry, he 'would not give sixpence for a coronet, or a penny for a mitre.'¹ Between 1830 and 1836, then, it was assuredly no unreasonable forecast that the future of the Church of England might be summed up in the formula, 'either comprehension or disestablishment'; the Church must, men thought, either embrace within its limits the whole or nearly the whole of the nation, or cease to be the National Church.² The experience of more than seventy years has given the lie to reasonable anticipations. The country has, since 1832, been represented first by a middle-class Parliament, and next by a more or less democratic Parliament, yet has not sanctioned either comprehension or disestablishment. In all ecclesiastical matters, Englishmen have favored a policy of conservatism combined with concession. Conservatism has here meant deference for the convictions, sentiments, or prejudices of churchmen, whenever respect for ecclesiastical feeling did not cause palpable inconvenience to laymen, or was not inconsistent with obedience to the clearly expressed will of the nation. Concession has meant readiness to sacrifice the privileges, or defy the principles, dear to churchmen whenever the maintenance thereof was inconsistent with the abolition of patent abuses, the removal of grievances, or the carrying out of reforms demanded by classes sufficiently powerful to represent the voice or to command the acquiescence of the country.

"What have been the circumstances that have given rise to this unforeseen and apparently paradoxical policy of conservatism and concession? To put the same enquiry in another shape: what have been the conditions of opinion which, in the sphere of ecclesiastical legislation, have prevented the dominant liberalism of the day from acting with anything like its full force, and have in many instances rendered it subordinate to the strong cross-current of clerical or Church opinion?

"These circumstances or conditions were, speaking broadly, the absence of any definite programme of Church reform commanding popular support; and the unsuspected strength of the hold possessed by the Church of England on the affections of the nation.

"The whigs certainly failed to produce any clear scheme of ecclesiastical reform.³ . . . Nor did the Benthamites stand in a

¹ Dicey 314.

² *Ibid.* 315.

³ *Ibid.* 316.

stronger position than the whigs. The philosophic radicals held all ecclesiastical establishments to be at best of dubious utility, and expected them to vanish with the progress of enlightenment. In all matters regarding the Church they were utterly at sea. They were stone-blind to the real condition of opinion in England.¹ . . . In ecclesiastical affairs they possessed neither insight nor foresight; they did not understand the England in which they lived, they did not foresee the England of the immediate future.² . . .

"The Church establishment, further, if in 1832 it was strong both in its own inherent strength and in the weakness of its opponents, assuredly obtained, for some time at any rate, a great increase of power from the High Church movement.³ . . . It was a most successful effort to impress upon churchmen, and especially upon clergymen, the belief that the very existence of the Established Church was in peril, to inspire clerical convictions with new life, and to place Church opinion in direct opposition to the liberalism which undermined the basis of ecclesiastical authority.⁴ . . . The High Church movement reinvigorated the faith of the clergy in their own high authority; it disciplined them for political no less than for ecclesiastical conflicts.⁵ . . . Newman and his allies created such a Church party as had not existed in England since the days of the Stuarts.⁶ . . .

"Gradually the necessary, or at any rate the easiest, line of action became clear. The fundamentals of the establishment must be left untouched; patent abuses which shocked the dominant opinion of the day, or grievances which irritated powerful classes, must be removed, but even the most salutary reforms might be long delayed and tempered or curtailed out of deference to the principles or the sentiment of churchmen. Here we have the policy of conservatism combined with concession which has coloured the whole of modern ecclesiastical legislation."⁷

Here I must take leave of this fascinating book. It is a remarkable book in many ways. The author says in his preface: "It cannot claim to be a work of research; it is rather a work of inference or reflection." I should say, however, that the author has ransacked English literature for the most apposite and striking proofs and illustrations of his inferences and reflections. In reading, too, his "characters" of public men, whom he can have known

¹ Dicey 320.

⁵ *Ibid.* 392.

² *Ibid.* 322.

⁶ *Ibid.* 330.

³ *Ibid.* 327.

⁷ *Ibid.* 333.

⁴ *Ibid.* 328.

only through their writings or through the testimony of others, one wonders if he has spent his life in studying these men. He claims no merit for his facts, and yet his pages are crowded with facts as well as reflections of the most interesting and instructive character. Any American who wishes to know the England of the nineteenth century as if he were a native will find in Professor Dicey, who is a worthy successor of Blackstone, an incomparable instructor.

C. C. Langdell.

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